

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DELSHAH 60 NINTH, LLC,	:	
	:	Civil Action No.: 20-cv-5905
Plaintiff,	:	
	:	
-against-	:	
	:	<b><u>NOTICE OF REMOVAL</u></b>
FREE PEOPLE OF PA LLC,	:	
	:	
Defendant.	:	
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Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant Free People of PA LLC n/k/a URBN US Retail LLC (“Defendant” or “Free People”) by and through its undersigned counsel, hereby gives notice of the removal of the above-entitled action, and all claims and causes of action therein, currently pending in the Supreme Court of the State of New York, County of New York (the “State Court Action”) to the United States District Court for the Southern District of New York, and respectfully states as follows:

**PARTIES**

1. Free People of PA LLC was a limited liability corporation organized and existing under the laws of Pennsylvania with a principal place of business at 5000 S. Broad St., Philadelphia, Pennsylvania. On or about February 1, 2020, it merged with Anthropologie LLC, with Anthropologie LLC surviving. Anthropologie LLC was subsequently renamed URBN US Retail LLC. URBN US Retail LLC is a limited liability company existing under Pennsylvania law with a principal place of business at 5000 S. Broad St., Philadelphia, Pennsylvania. URBN US Retail LLC’s sole member and owner is Urban Outfitters Wholesale, Inc., a corporation existing under Pennsylvania law with a principal place of business at 5000 S. Broad St., Philadelphia, Pennsylvania.

2. Upon information and belief, Delshah 60 Ninth, LLC (“Plaintiff” or “Delshah”) is a limited liability company organized and existing under the laws of New York with a principal place of business located at 114 East 13th Street, Frnt 1, New York, New York 10003. Upon information and belief, Delshah’s sole member and owner Delshah Capital Limited is a limited liability company incorporated under the laws of the British Virgin Islands with a principal place of business in New York, New York.

### **BACKGROUND**

3. On or about June 29, 2020, Plaintiff commenced an action against Free People in the Supreme Court of the State of New York, County of New York entitled *Delshah 60 Ninth, LLC., v. Free People of PA LLC* by filing a Summons and Complaint, which was assigned Index No. 652791/2020.

4. A true and correct copy of the Summons and Complaint is attached hereto as Exhibit A. The Complaint is the only known pleading filed to date in the State Court Action.

5. Counsel for Free People accepted service of the Complaint on July 29, 2020.

6. Delshah’s claims against Free People in the Complaint relate to Delshah’s termination of its lease with Free People, where Delshah was the landlord and Free People was the tenant, and damages and attorneys’ fees sought by Delshah in excess of \$10 million. Free People has not yet responded to the Complaint, and reserves all defenses and counterclaims thereto.

7. In the Complaint, Delshah brings two causes of action against Free People: (1) breach of contract; and (2) attorneys’ fees.

**THIS COURT HAS DIVERSITY JURISDICTION**

8. Under 28 U.S.C. § 1332(a), “[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000 and is between . . . citizens of different states.”

9. Here, as set forth below, diversity jurisdiction exists because the amount in controversy exceeds \$75,000 and Delshah and Free People are citizens of different states.

10. In the Complaint, Delshah states that it is seeking at least \$10,607,604 in damages. Thus, while Free People denies any and all liability to Delshah, the amount in controversy exceeds \$75,000, exclusive of interests and costs.

11. Free People of PA LLC was a citizen of Pennsylvania and was domiciled there. The successor corporate entity of Free People of PA LLC, URBN US Retail LLC, is a citizen of Pennsylvania and is domiciled there. Free People of PA LLC was a limited liability corporation organized and existing under the laws of Pennsylvania with a principal place of business at 5000 S. Broad St., Philadelphia, Pennsylvania. On or about February 1, 2020, it merged with Anthropologie LLC, with Anthropologie LLC surviving. Anthropologie LLC was subsequently renamed URBN US Retail LLC. URBN US Retail LLC is a limited liability company existing under Pennsylvania law with a principal place of business at 5000 S. Broad St., Philadelphia, Pennsylvania. URBN US Retail LLC’s sole member and owner is Urban Outfitters Wholesale, Inc., a corporation existing under Pennsylvania law with a principal place of business at 5000 S. Broad St., Philadelphia, Pennsylvania.

12. Delshah is a citizen of New York and is domiciled there. Upon information and belief, Delshah is a limited liability company organized and existing under the laws of New York with a principal place of business in New York. Upon information and belief, Delshah’s sole

member and owner Delshah Capital Limited is a limited liability company incorporated under the laws of the British Virgin Islands with a principal place of business in New York.

13. For jurisdictional purposes, “[a] limited liability company [‘LLC’] is a citizen of every state of which any of its members is a citizen[.]” *Krause v. Forex Exchange Market, Inc.*, 356 F. Supp. 2d 332, 336 (S.D.N.Y. 2005) (citations omitted).

14. Based on the above, there is complete diversity of citizenship between Free People and Delshah.

### **REMOVAL IS TIMELY**

15. Free People accepted service of the Summons and Complaint on July 29, 2020.

16. Because this Notice of Removal is being filed within thirty days of Free People’s receipt of the initial pleading in the State Court Action by Free People it is timely under 28 U.S.C. § 1446(b).

### **VENUE**

17. Pursuant to 28 U.S.C. § 1441(a), venue is proper because this Court is the United States District Court for the District corresponding to the place where the State Court Action was pending.

### **NOTICE**

18. Pursuant to 28 U.S.C. § 1446(d), Free People will promptly file a Notice of Filing of Notice of Removal (with a copy of this Notice of Removal attached) with the Clerk of the Supreme Court of New York, County of New York and serve it upon all counsel in the this action. A copy of the Notice of Filing of Notice of Removal is attached as Exhibit B.

**STATE COURT PLEADINGS**

19. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders of record served on Free People in this action are attached to this notice as Exhibit A. This case is being removed from the Supreme Court of the State of New York, County of New York, 60 Centre Street, New York, NY 10007.

**CONCLUSION**

WHEREFORE, Defendant Free People hereby removes this action from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York, being the District for the county in which this action is pending, and respectfully requests that the matter proceed in this Court as an action properly removed thereto.

Dated: New York, New York  
July 29, 2020

**FAEGRE DRINKER BIDDLE & REATH LLP**

*s/ Brian P. Morgan*

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*Attorneys for Defendant Free People of PA LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29th day of July, 2020, a copy of the foregoing was filed served via email and Federal Express on:

Bradley S. Silverbush  
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*Attorneys for Plaintiff Delshah 60 Ninth LLC*

/s/ Brian P. Morgan  
Brian P. Morgan